IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8822 of 1995

with

SPECIAL CIVIL APPLICATION No 1363 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PREMJIBHAI SHANKERBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8822 of 1995
   MRS DT SHAH for Petitioner No. 1
   MR RC KODEKAR ASSTT GOVT PLEADER for Respondent No. 1-2
2. Special Civil Application No. 1363 of 1996
   MRS DT SHAH for Petitioner No. 1
   MR RC KODEKAR ASSTT GOVT PLEADER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 19/01/2004

COMMON ORAL JUDGEMENT

Heard learned advocate Mrs.D.T.Shah appearing on behalf of the petitioners and learned AGP Mr.R.C.Kodekar for respondent - State Authority in both these petitions.

when these matters are taken up for hearing, learned advocate Mrs.D.T.Shah has filed Rejoinder in Special Civil Application No.8822 / 1995 which is taken on record and a copy thereof has been served on the other side.

In both these petitions, the petitioners have challenged the order passed by the labour court, Surendranagar in Recovery Application filed by the petitioner. The labour court has granted some amount in favour of the petitioners and petitions are filed for claiming the rest of the amount. Learned AGP Mr.R.C.Kodekar has submitted that both these petitions are in respect of the Forest Department. However, learned AGP Mr.Kodekar raised the contention that the labour court passing the order has considered the Government Resolution dated 17th October, 1988 wherein this Court has taken the view that the Government Resolution dated 17th October, 1988 is not applicable to the Forest Department. Therefore, he submitted that the order passed by the labour court itself is without jurisdiction and therefore, now further challenge or grievance, this Court cannot examine the same in light of the decision of the Division Bench of this Court.

Learned advocate Mrs.D.T.Shah is also not able to satisfy this Court that the Government Resolution dated 17th October, 1988 is applicable to the Forest Department. Therefore, obviously challenge cannot be accepted as the labour court has no jurisdiction to implement or to direct the Forest Department to implement the Government Resolution dated 17th October, 1988 in favour of the petitioner. Learned advocate Mrs.D.T.Shah submitted that let the present challenge may stand futile but whatever payment is made by the Forest Department to the petitioners in pursuance of the order in question, the same may not be recovered by the respondents from the petitioners.

I have given my careful consideration to the submissions made by the learned advocates appearing on behalf of the respective parties. I have also perused the order passed by the labour court in recovery

application. However, considering the view taken by the Division Bench of this Court that the Government Resolution dated 17th October, 1988 is not applicable to the Forest Department, naturally, the recovery which has been filed based on the Government Resolution dated 17th October, 1988 cannot be entertained by the labour court. Therefore, on this ground alone, both these petitions deserve to be dismissed and they are dismissed accordingly with clarification that in pursuance of the order passed by the labour court, Surendranagar in question under challenge of these petitions respectively, if any payment is already made by the respondents to the petitioners, the same shall not be recovered by the respondents from the petitioners because of the order passed by this Court.

Accordingly, both these petitions stand dismissed. Rule stands discharged with no order as to costs.

However, looking to the present controversy on the law point, whether the Forest Department is an industry for the purpose of Section 2[j] of the Industrial Dispute Act and the Government Resolution dated 17th October, 1988 is applicable to the Forest Department or not, it is observed that the rights and contentions of the petitioner would be open and the same, if challenged, would govern in accordance with the decision that may be arrived at by this Court and in future, if the decision is in favour of the petitioners, it is open for the petitioners to raise and / or file proper proceedings against the respondents before appropriate forum.

Date : 19.1.2003 [H.K.Rathod, J.]

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